

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,413

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) revoking her foster care home license. The issue is whether the petitioner was or is in violation of the pertinent licensing regulations.

FINDINGS OF FACT

The petitioner and her husband were licensed foster care providers in their home. In June, 1993, a seven-year-old boy who had been placed in the petitioner's home was found to have sexually abused the petitioner's young daughter. Immediately after this incident the boy was removed from the petitioner's home and placed in another home in a nearby town.

In early September, 1993, the petitioner, contacted the boy's new school because she was concerned that the school "needed to know" about the boy's history so that the other children in the school could be "protected". Officials at the boy's school reported the petitioner's contact with them to SRS.

When initially confronted by SRS about her contacting the boy's school the petitioner denied it because she was concerned SRS would remove another foster child who had recently come to live with her. The petitioner later admitted to SRS that she had contacted the school, but defended her action as responding to a "higher duty".

Following its investigation of the incident and a Commissioner's Review Hearing the Department (in a notice dated January 20, 1994) notified the petitioner and her husband that their foster care license would be revoked because of the petitioner's wilful violation of the Department's regulations requiring the confidentiality of information regarding foster children.

At the petitioner's fair hearing (held on April 28, 1994) there was considerable dispute as to whether the petitioner contacted the boy's school before or after she had been specifically advised by SRS that it would be a breach of confidentiality for her to do so. There is also dispute over whether a previous "anonymous" phone call to the boy's school by a male caller was made by the petitioner's husband. Even if these factual issues were resolved in the petitioner's favor, however, based on the petitioner's testimony and legal position at the hearing, there is still an ample basis to affirm the Department's decision in this matter.

The petitioner is not at all contrite about contacting the boy's school. She also admits that she was untruthful and evasive with the Department during its investigation in this matter. Although she maintains that she was given conflicting and unclear advice from the Department regarding confidentiality, the petitioner cannot (and does not) claim that she does not now fully understand what the Department requires of her and other foster care providers under these circumstances. Nonetheless, it was clear from the petitioner's testimony and legal arguments that she still does not believe that the requirement of confidentiality should apply to this boy's situation.

Based on the petitioner's testimony, demeanor, and legal representations, it must be found that the Department's concern that the petitioner cannot be trusted not to breach the confidentiality of foster children in the future--especially if circumstances similar to this case were to arise--is entirely founded.

ORDER

The Department's decision is affirmed.

REASONS

The Department's Foster Care Regulations include the following provisions:

315 Foster parents shall treat all personal information regarding foster children and their families as confidential.

322 Foster parents shall cooperate with the child placing agency in case planning and in carrying out the case plans.

In her testimony and legal argument in this matter the petitioner all but admits that she does not feel bound by the above regulations as they pertain to the facts of this case. However, it is the statutory duty and authority of SRS, not the petitioner or the human services board, to "fix standards and issue regulations necessary to administer (the) laws" with which that agency is charged. 33 V.S.A. §§ 304(b) (2), and 3501(a). It certainly cannot be concluded that the Department's policy regarding confidentiality is arbitrary or capricious. The petitioner may not personally agree with the Department's policy, but she cannot claim any legally enforceable right not to follow it.

Even if the petitioner had previously been given conflicting information from the Department regarding confidentiality, and even if the disputed facts surrounding the petitioner's actions in September, 1993, were found entirely in her favor, the evidence is clear that the Department cannot rely upon the petitioner in the future to follow and uphold the above regulations regarding confidentiality and cooperation with the Department in implementing case plans for foster children. This is ample basis, or "cause", under the statutes for the Department to revoke the petitioner's and her husband's foster care home license.⁽¹⁾ See 33 V.S.A. § 306(b)(3). Therefore, the Department's decision is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. At oral argument before the Board on June 8, 1994, the petitioner's attorney represented that the petitioner was now agreeable to follow the Department's directives concerning confidentiality. The petitioner is free to reapply for a license on this basis.